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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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RICHARD M. GOLDBERG  
25 EAST SALEM SREEET  
SUITE 419  
HACKENSACK, NJ 07601

EXAMINER

OMGBA, ESSAMA

ART UNIT PAPER NUMBER

3726

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,456

Applicant(s)

RUTSCH, HERMANN W.

Examiner

Essama Omgba

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,15-19,24 and 26 is/are rejected.
- 7) ☒ Claim(s) 20-23 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed on May 30, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

2. The abstract of the disclosure is objected to because "(Fig. 1)" in line 7 should be deleted. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Vermilye (US Patent 4,722,821).

5. Vermilye discloses a method of introducing a skeletal frame 50 comprising rods 70 for a supporting element 100 into an injection mold and embedding the rods in the

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supporting element during injection molding of the supporting elements, the rods being encapsulated by molding with plastic of the supporting element, see column 2, lines 43-49, column 5, lines 32-68 and column 6, lines 1-5. Applicant should note that the preamble has not been given any patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarzbich (US Patent 5,769,491) in view of Vermilye or Yamada et al. (US Patent 5,609,652).

Schwarzbich discloses a method of producing a lordosis support 10 with a molded supporting element 14 of plastic of adjustable curvature at rods of a lattice mat 12 formed by longitudinal and transverse rods (16, 18, 20, 22, 24, 28), the method comprising fastening the supporting elements to the lattice mat by clamps 56, see

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column 1, lines 43-63, column 2, lines 48-67 and column 3, lines 1-26. Schwarzbich does not disclose the supporting element being molded on the rods of the lattice mat, however it is known to assemble plastic molded part that were previously fastened to metal frames using various mechanical fastening means by directly injection molding the plastic part on the metal frame as taught by Vermilye or Yamada et al., see column 1, lines 60-68 and column 2, lines 1-11 and 31-42 of Vermilye or column 1, lines 52-67 and column 2, lines 1-43 of Yamada et al. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have embedded the rods of Schwarzbich in the supporting element during injection molding of the supporting element, in light of the teachings of Vermilye or Yamada et al., in order to reduce cost in manufacturing the lordosis support. Applicant should note that the lordosis support is considered an initiating element for active head supports of a vehicle seat.

For claim 15, Applicant should note that it is within the general knowledge of one of ordinary skill in the art to appropriately position the rods in a mold.

For claims 17 and 24, Applicant should note that connecting the transverse rods and the longitudinal rods in the mold is an obvious matter of design choice wherein no stated problem is solved or unexpected results obtained in connecting the transverse rods and the longitudinal rods in the mold versus connecting them before introducing them in the mold as taught by Schwarzbich/Vermilye/Yamada et al.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarzbich/Vermilye/Yamada et al. as applied to claim 17 above, and further in view of Hosoi (JP 62-92817).

Schwarzbich discloses a method of producing a lordosis support as shown above except for the rods being introduced in the mold as straight rod endless material. However Hosoi teaches introducing parts 11 in continuous length in a mold, see abstract. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have introduced the rods in the method of Schwarzbich/Vermilye/Yamada et al as rods of endless material, in light of the teachings of Hosoi, in order to continuously mold the support.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwarzbich/Vermilye/Yamada et al./Hosoi as applied to claim 18 above, and further in view of JP 01214417.

Schwarzbich/Vermilye/Yamada et al./Hosoi discloses a method of producing a lordosis support as shown above except for bending the longitudinal in the mold. However JP'417 teaches such mold with a bending mechanism, see abstract. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used a bending mold in the method of Schwarzbich/Vermilye/Yamada et al./Hosoi, in light of the teachings of JP'417, in order to minimize the setup for producing the lordosis support. Applicant should also note that it appears as if the insert 12 is bend in the mold in the method of Hosoi.

***Allowable Subject Matter***

10. Claims 20-23 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (703) 305-2915. The examiner can normally be reached on M-F (10-7:30) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (703) 308-1789. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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December 12, 2003

